

Tamás Vince ÁDÁNY¹:

SCHABAS ON GENOCIDE

Review of William A. Schabas: *Genocide in International Law* (Cambridge University Press, 2000)

There have been several monographies published on the same subject matter, nevertheless in the last three decades genocide was not discussed in such details in the international legal doctrine. The Genocide Convention itself rested for half a century in a state of “near-dormancy”; not considering application by a few national courts and other similar bodies. Given such conditions, I believe it is a normal assumption of any reader to expect for some kind of “re-animation” of the 1948 text.

However, much more than a critical revision of such a text is a dangerous task. Genocide, the most heinous crime of human history is also the core of international criminal law. This means that there are two possible, sometimes confronting approaches for its monographical legal discussion: one of the criminal and another one of the international lawyers'. A way of flexible interpretation, widely accepted, or even necessary for an international lawyer might be contrary to the usual continental criminal law dogmatism. Prof. Schabas' approach in several cases will surely be unusual, maybe even unacceptable to the typical continental criminal lawyer.

The solution for this problem is clarified early, in the Introductory part of the book: “The criticisms of lacunae or weaknesses in the Convention will be considered, but I understand the definitions as it stands to be adequate and appropriate.” As for my understanding of his book, in spite of his aforesaid statement, Prof. Schabas practically renews the meaning of the original text while respecting it almost as much as the most dogmatist criminal lawyer would do. In spite of the obvious elegance in achieving this, at some points his arguments result in an extensive interpretation, what is not very popular with criminal lawyers. Moreover, at several points the slight differences between Anglo-Saxon and continental criminal law dogmatism and traditions can be confusing, see *p.e.* the chapter on mental element.

The technique applied to achieve this goal can be caught by taking a look at the inner structure of the individual chapters. For almost all separate problems discussed in the book, the author starts his argumentation by a detailed analysis based upon the *travaux préparatoires*. This way he is able to decide if a certain meaning had been assigned to a given notion, or it had been clearly declined during the preparatory work. After clarifying the original meaning of the text,

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generally on a word-by-word basis, the book also reveals the practical application of the convention since its enter into force. This includes application by the two UN *ad hoc* tribunals as well as jurisdiction at national level. After several chapters the number and variety of his examples would cause a reader to think about if the Convention – and genocide as well – was really dormant and inactive for decades. Automatically one must also recognise, that genocide, the most grave crime of all, has been part of the last few decades' reality, just hiding at the domestic level.

The comparative analysis of national implementations always fits well in the general picture outlined in the aforesaid way. This comparison is well beyond the necessary level required by the need to discuss universal jurisdiction, nevertheless, the book always remains balanced, and never turns into a comparative criminal law handbook.

In some cases even this approach in itself is not suitable. For such phrases as the “national, ethnic, racial or religious” almost fifty years development of human rights law must also be considered. Prof. Schabas' expertise on this field is extremely apparent in these sections.

In the preface Prof. Schabas writes about his personal reasons for interest in the subject: he states, there is more passion in the book, as it is visible for the first sight. But there is an obvious passion in this book: such a clear, technical reasoning like the one of the author's should be cold by nature. Quite the contrary, the argumentation of this work, due to this “passion”, comes from deep humanity, and this is visible for the very first and brief look.

The general structure of the book outlined above is comprehended by a continuous background examination. This way the author complies with the general requirement of interpretation, and remains tied to the aim and goal of the Convention, meanwhile gives the reader the answers to the “why”-s. Answering questions about the reasons for a certain normative wording is also a symptom of the humanitarian perspective of the author.

The structure and wording of the book make it a useful material for a wide variety of potential readers. Reading and understanding from the first page to the last is interesting to all regardless of professional background. In other words, even supposing hardly any legal expertise this work gives a profound knowledge of the subject matter to all readers, including non-lawyers as well. For academic lawyers it is most suitable to use as a textbook, and the clearly visible structural elements render it a “must-have” handbook for the practicing international and criminal lawyer.